IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS W. MORELLI, Trustee Under Thomas W. Morelli Trust Agreement, Plaintiff,	:	CIVIL ACTION
v.	:	NO. 97-1807
HUFFMAN KOOS, INC. t/a HUFFMAN KOOS FACTORY OUTLET, Defendant.	:	

M E M O R A N D U M

BUCKWALTER, J. January 28, 1998

For the reasons that follow, the court will grant Defendant's Motion for Partial Summary Judgment and deny Plaintiff's Cross-Motion for Summary Judgment.

I. BACKGROUND

The Thomas W. Morelli Trust, of which Plaintiff Thomas W. Morelli ("Morelli") is Trustee, owns the Home Furnishing Factory Outlet Mall in Morgantown, Pennsylvania. Defendant Huffman Koos ("Huffman") leased space at the mall for an initial term of one year, from February 1, 1996 to January 31, 1997. The lease gave Huffman the option to renew its tenancy for an additional term of five years and required Huffman to provide written notice of its desire to renew four months before the expiration of the initial term. Further, the lease stated that:

> Should Tenant hold over in possession of the Demised Premises after the expiration or termination of the term hereof without the execution of a new lease agreement or extension or rental agreement, Tenant, at the option of Landlord, shall be deemed to be occupying the Demised Premises from month to month, subject to such occupancy being terminated by Landlord upon twenty (20) days written notice, at two (2) times the rental . . . .

Lease at section 20.02.

Huffman did not give the Morelli Trust written notice of an intent to renew. Instead, in an October 15, 1996 letter, Huffman informed the Trust that it would "exercise its option to terminate its lease on the Morgantown outlet effective January 31, 1997." Although the parties discussed extending the lease; the substance of these negotiations is disputed, and they are unnecessary to resolution of these motions.[1] While no written extension agreement was reached, Huffman occupied the premises for an additional month -- February 1997, and it paid the February rent as though the initial term had continued. On February 12, 1997, in-house counsel for the mall's management company wrote Huffman that:

> It has become apparent that with Huffman Koos' determination to vacate the premises on February 28, 1997, no satisfactory extension of your staying at the Mall . . . can be achieved. Therefore, . . . demand is hereby made that Huffman [ ] immediately pay $31,249.99 pursuant to Section 20.02 "Holding Over" which requires two

1. Entry of partial summary judgment for Huffman is not based on this alleged extension, as it cannot establish the absence of a genuine issue of material fact on this issue.

> (2x) times the rental as rent in the case of Hold Overs. One (1x) times the rent in the amount of $31,249.99 was received. In the event that the $31,249.99 is not received in this office within five (5) days of the date hereof, Huffman Koos, Inc, is in default of the Lease and the Landlord will take any all actions necessary to recover said sum, and seek other remedies available to it under the Lease. Further if you have not vacated by February 28, 1997, the Landlord will seek Hold Over rental for each month thereafter.

The Trust retained outside counsel, who wrote Huffman that the lease had ended on January 31, 1997 "without the execution of a new lease, extension or renewal agreement," and reiterated that, pursuant to Section 20.02, Morelli deemed Huffman to be a holdover tenant and therefore liable for double rent for the month of February. The letter noted that the failure to pay the Hold Over rent constituted an Event of Default pursuant to Section 18.01 of the Lease, and it also gave Huffman 20 days to vacate the premises.

Huffman vacated the premises on February 28, 1997. It argues that it remained on the premises in February pursuant to an oral extension of the lease and therefore does not owe double rent. In the alternative, it argues that it was a holdover tenant under a month to month lease. Morelli counters that, by remaining in possession beyond the expiration of the lease's initial term, Huffman exercised its option to renew for the additional term, and is therefore liable for five years' rent. Huffman rejoins that Morelli had already chosen to treat Huffman

as a holdover tenant and was estopped from invoking the renewal option.[2]

II. DISCUSSION

A lease's interpretation is controlled by the parties' intent, which is first discerned from the lease itself. Warren v. Greenfield, 595 A.2d 1308, 1311 (Pa. Super. 1991); In Re 1600 Arch Ltd. Partnership, 938 F. Supp. 300, 301 (E.D. Pa. 1996). Under Pennsylvania law, where a tenant has an option to renew and remains in possession after expiration of the lease, the landlord may assume that the tenant has exercised that option, regardless of the tenant's actual intent. Cusamano v. Anthony M. DiLucia, Inc., 421 A.2d 1120, 1124 (Pa. Super. 1980). This general rule is inapplicable here, however, as the parties agreed to an express mechanism for renewal: written notice at least four months in advance of the end of the tenancy. Cf., id. at 1121 ("The lease contained no indication of the means by which the Tenant might exercise the option to renew."); id. at 1125 ("[The lease] does not require that the tenant notify the Landlord of his intention to exercise the option to renew."). The case law makes this distinction clear. See id., citing Adams v. Dunn, 64 Pa. Super 303 (Pa. Super. 1916) ("This was not a case in which,

2. Morelli also responds to certain of Huffman's affirmative defenses that it raised in its Answer but does not press in its motion for partial summary judgment. The court does not reach those issues.

by the terms of the original lease, the Lessee was given the option to renew the same on condition that his election so to do should be evidenced by a written notice a period of time in advance of the end of the term."); Murtland v. English, 63 A. 882 (1906) (same); cf., Federal Realty Inv. Trust v. Kids Wear Boulevard, Inc., No. 93-6310, 1996 WL 92055, at *6 (E.D. Pa. Mar. 1, 1996) (while tenant did not follow lease's express renewal mechanism, its post-expiration conduct-- payment of a different rent -- demonstrated that it accepted lease renewal on terms contained in unexecuted lease modification agreement), aff'd by 127 F.3d 1097 (3d Cir. 1997) (Table).

Moreover, the court agrees that, having elected to treat Huffman as a holdover and twice informed him that he would be liable for double rent as a month to month tenant, Morelli was precluded from altering that choice to Huffman's detriment. See H.F.D. No. 26, Inc. v. Middletown Merchandise Mart, 467 F.2d 253, 256 (3d Cir. 1972). Morelli's argument that it is not bound by its choice because the lease does not limit its remedies is misleading and conflates its default remedies with its holdover remedies. Section 18.05 (c) simply states that mention of any remedy in the lease does not preclude any other remedy, it does not, as Morelli suggests, state that the actual invocation of a remedy will not preclude Morelli from invoking additional, contradictory remedies. The court agrees that the lease makes

several remedies available to Morelli should Huffman default, see sections 18.02 (c); 18.04; & 18.05 (a), but these do not permit Morelli to override the Lease's express renewal mechanism.

The court will accordingly enter partial summary judgment for Huffman, to the extent that it finds that, as a matter of law, Huffman held the premises in February 1997 as a month-to-month tenant pursuant to section 20.02.

An appropriate order follows.

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O R D E R

AND NOW, this 28th day of January 1998, upon consideration of Defendant's Motion for Partial Summary Judgment (Dkt. # 13); Plaintiff's Response thereto, and its Cross-Motion for Summary Judgment (Dkt. # 15); Defendant's Opposition to Plaintiff's Cross-Motion (Dkt. # 18); and, Plaintiff's Reply (Dkt. # 22), it is hereby **ORDERED** that:

(1) Defendant's Motion for Partial Summary Judgment is **GRANTED**, in accordance with the accompanying Memorandum; and,

(2) Plaintiff's Cross-Motion for Summary Judgment is **DENIED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.